

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
CIVIL NO.: 24-4562 (DSD/DLM)

Michael Fiorito; Dennis Rains;  
and Joseph Parshall,  
individually and on behalf of  
all others similarly situated,

Plaintiffs,

v.

**ORDER**

Metropolitan Council, doing  
business as Metro Transit;  
Delta Airlines; and Sun  
Country Airlines,

Defendants.

This matter is before the court upon plaintiffs' complaint. Based on the court's review of the file, **IT IS HEREBY ORDERED** that:

1. The application to proceed in forma pauperis of plaintiff Michael Fiorito [ECF No. 2] is denied. Fiorito has been found ineligible to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(g), see Fiorito v. Prodigal Company, No. 24-CV-3757 (PJS/TNL), ECF No. 7 (D. Minn. Jan. 3, 2025), and the court agrees with the analysis in that order. In any event, the finding that Fiorito is currently ineligible to proceed IFP due to the effect of § 1915(g) is now res judicata.

2. Plaintiffs Dennis Rains and Joseph Parshall are dismissed with prejudice from this action for failure to prosecute.

See ECF Nos. 3 & 4 (letters directing Rains and Parshall to pay the filing fee for this matter or apply for in forma pauperis status within 15 days); Henderson v. Renaissance Grand Hotel, 267 F. App'x 496, 497 (8th Cir. 2008) (per curiam) ("A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff's failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.").

3. Fiorito's motion for permission to seek entry of default or, in the alternative, for service of process to be effected by the court with respect to defendants Metropolitan Council and Sun Country Airlines [ECF No. 8] is denied. No summons has been issued in this matter, and therefore service of process cannot have been properly effected on any of the defendants. See Fed. R. Civ. P. 4(c)(1). Accordingly, none of the defendants can be in default, and Fiorito's request that defaulted be entered with respect to these defendants is frivolous. Finally, because Fiorito does not qualify for in forma pauperis status, the court will not effect service of process on his behalf.

4. The motion for an extension of the response deadline as to defendant Delta Airlines [ECF No. 7] is denied as moot. Again, service of process has not yet properly been effected and cannot be effected until the summons is issued in this matter, which will not occur until Fiorito has paid the \$405.00 filing fee for this

matter. There is no response deadline at this time, and therefore the response deadline cannot be extended.

5. Fiorito must pay the \$405.00 filing fee for this matter by no later than January 27, 2025, failing which this matter will be dismissed without prejudice for failure to prosecute. That deadline will not be extended.

Dated: January 13, 2025

s/David S. Doty  
David S. Doty, Judge  
United States District Court